



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 20, 1998

Mr. Wil Galloway
General Counsel
Texas Department of Agriculture
P.O. Box 12847
Austin, Texas 78711

OR98-1277

Dear Mr. Galloway:

You ask this office to reconsider our ruling in Open Records Letter No. 98-0599 (1998). Your request for reconsideration was assigned ID# 116121.

The Texas Department of Agriculture (the "department") received a request for all reports and test results, documentation, correspondence, opinions and status relating to TDA Incident No. 2424-01-97-0014. In Open Records Letter No. 98-0599 (1998), this office concluded in part that the department could not withhold certain factual information as attorney work product under section 552.111 of the Government Code.

You argue that the factual summaries of department investigations are non-neutral recitals of facts and, therefore, protected as attorney work product under section 552.111. We disagree with your assertions that every factual summary of department investigations is a non-neutral recital of facts. The application of an exception to disclosure under the Open Records Act must be determined on a case-by-case basis. *See* Open Records Decision No. 485 (1987). Furthermore, a governmental body wishing to withhold factual information as attorney work product must explain in every case that the factual information reveals an attorney's thought processes or mental impressions. *See* Open Records Decision No. 647 (1996). We have examined the documents submitted for our review and believe that the summary at issue contains both neutral and non-neutral facts. Furthermore, we have reviewed the department's original arguments for withholding the requested information. We believe that our conclusion in Open Records Letter No. 98-0419 (1998) is substantially correct regarding those facts that the department may not withhold as attorney work product, based on the department's initial arguments for withholding the information. Thus, if you wish to withhold this type of information in response to future requests for documents of this nature, you must explain to this office in each case whether the factual information reveals an attorney's mental impressions or thought processes. *See* Open Records Decision No. 647 (1996).

We, therefore, affirm Open Records Letter No. 98-0599 (1998). If you have any questions regarding this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, reading "Loretta DeHay". The signature is fluid and cursive, with the first name "Loretta" being more prominent than the last name "DeHay".

Loretta R. DeHay
Deputy Chief
Open Records Division

LRD/rho

Ref.: ID# 116121

Enclosures: Submitted documents

cc: Mr. Kerry Porter
U.S. Aviation Underwriters, Inc.
15303 Dallas Parkway, Suite 1370
Dallas, Texas 75248
(w/o enclosures)